

ORDINANCE NO. 28

SERIES 2013

AN ORDINANCE APPROVING THE SECOND AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT GRANTING A CONSERVATION EASEMENT TO THE CRESTED BUTTE LAND TRUST FOR THE LANDS REFERRED TO AS "PHASE III" OF THE KOCHVAR PROPERTIES PURCHASE BY THE TOWN OF CRESTED BUTTE FROM THE TRUST FOR PUBLIC LAND DESCRIBED AS TOWNSHIP 13 SOUTH, RANGE 86 WEST, 6TH P.M., SECTION 28: E1/2NE1/4; EXCEPT THAT PORTION OF THE 70.2 ACRE TRACT RECORDED AT RECEPTION NO. 599303 AND 599304, LYING WITHIN E1/2NE1/4, COUNTY OF GUNNISON, STATE OF COLORADO

WHEREAS, the Town of Crested Butte, Colorado ("**Town**") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and the laws of the State of Colorado;

WHEREAS, pursuant to that certain Amended and Restated Deed of Conservation Easement (the "**Agreement**") between the Town and the Crested Butte Land Trust ("**CBLT**") dated March 2, 2011 and recorded on March 3, 2011 in the official real property records of the Office of the Clerk and Recorder of Gunnison County, Colorado at Reception No. 604057, the Town placed a conservation easement on the lands legally described in the Agreement;

WHEREAS, the Town is acquiring additional lands from The Trust for Public Land (TPL), commonly referred to as "Phase III" of the Kochevar properties purchase, legally described as Township 13 South, Range 86 West, 6th P.M., Section 28: E1/2NE1/4; except that portion of the 70.2 acre tract recorded at Reception No. 599303 and 599304 lying within the E1/2NE1/4, County of Gunnison, State of Colorado (the "**Phase III Property**");

WHEREAS, upon acquiring the Phase III Property from TPL, the Town Council desires to place a conservation easement to be held by the CBLT on the Phase III Property;

WHEREAS, the CBLT desires to receive such conservation easement over the Phase III Property;

WHEREAS, in order to accommodate the Town placing a conservation easement on the Phase III Property, the Town and CBLT desire to amend the Agreement to include in the Phase III Property in the lands encumbered thereby;

WHEREAS, the Town Council finds that granting a conservation easement to the CBLT will serve to protect and preserve the natural, scenic, open space, recreational and other values relative to the Phase III Property, which are of great importance to the Town, and such a grant of conservation easement will work to substantially prevent the diminution and/or impairment of such values;

WHEREAS, the Town Council is authorized, pursuant to §§ 31-25-501 and 31-25-302, C.R.S., as amended, to enter into agreements in order to, in pertinent part, maintain interests in land, including, without limitation, entering into contracts that run with the land like conservation easements, for lands owned by the Town both inside and outside of the boundaries of Crested Butte, necessary, suitable or proper for the preservation or conservation of open space and vistas of recreational, aesthetic and other public interests; and

WHEREAS, the Town Council hereby finds that it is necessary, suitable and proper for the preservation and conservation of open space and vistas of recreational, aesthetic and other public interests, and to protect and preserve the natural, scenic, open space, recreational and other values relative to the Phase III Property, the same being in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the Town grant a conservation easement to the CBLT encumbering the Phase III Property, pursuant to the terms and conditions set forth hereinbelow.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

**Section 1. Authorization to Grant to the CBLT a Conservation Easement Encumbering the Phase III Property and to, Pursuant thereto, Amend and Restate the Amended and Restated Deed of Conservation Easement Memorializing the Terms of Such Grant.** In order to protect and preserve the natural, scenic, open space, recreational and other values relative to the Phase III Property, legally described as Township 13 South, Range 86 West, 6th P.M., Section 28: E1/2NE1/4; except that portion of the 70.2 acre tract recorded at Reception No. 599303 and 599304 lying within the E1/2NE1/4, County of Gunnison, State of Colorado, the Town Council hereby authorizes the Town to grant a conservation easement to the CBLT over the foregoing described real property, and in furtherance thereto, authorizes the Mayor and the Town Manager to appropriately execute the second amended and restated deed of conservation easement contemplating the terms and conditions relative to such grant in substantially the same form as **Exhibit "A"** attached hereto (the "**Second Amended and Restated CE**"). In conjunction therewith, the Town Council hereby authorizes the Mayor and the Town Manager to execute and deliver any and all additional and ancillary documents necessary and proper to consummate the transactions contemplated in the Second Amended and Restated CE following approval by the Town Attorney. The Town Clerk shall cause the Second Amended and Restated CE to be recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado contemporaneously with the transfer of title to the Phase III Property from TPL to the Town.

**Section 3. Severability.** If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid,

such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

**Section 4. Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 18th DAY OF November, 2013.

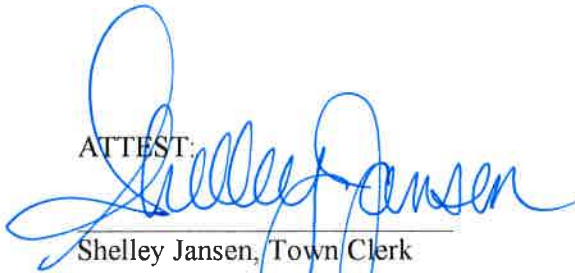
ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 2nd DAY OF December, 2013.

TOWN OF CRESTED BUTTE

By:

  
Aaron J. Huckstep, Mayor

ATTEST:

  
Shelley Jansen, Town Clerk



**SECOND AMENDED AND RESTATED DEED OF CONSERVATION  
EASEMENT**

**Crested Butte Land Trust**

**Town of Crested Butte - Kochevar Property Phases I, II and III - Gunnison County, CO**

**NOTICE: THE PROPERTY INTEREST IN THIS AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT AS IT ENCUMBERS THE PHASE I PROPERTY AND THE PHASE II PROPERTY HAS BEEN ACQUIRED IN PART WITH GRANT #10138 AND GRANT #11033 (TOGETHER, THE "GRANT") FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND ("BOARD"). THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND OTHER CONSERVATION VALUES. THE BOARD HAS FOUND THAT THIS DEED OF CONSERVATION EASEMENT PROVIDES BENEFITS THAT ARE IN THE PUBLIC INTEREST.**

**THIS SECOND AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT** is granted this \_\_\_\_ day of December, 2013, by the **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality, having its address at P.O. Box 39, Crested Butte, CO 81224 (the "**Grantor**") to and for the benefit of the **CRESTED BUTTE LAND TRUST**, a Colorado non-profit corporation, having an address at 308 3<sup>rd</sup> Street, P.O. Box 2224, Crested Butte, Colorado 81224 (the "**Grantee**"), for the purpose of forever conserving the agricultural productivity, open space character, wildlife habitat, outdoor recreational opportunities and scenic qualities of the subject property. The Grantor and the Grantee are individually referred to herein as a "**Party**", and are collectively referred to herein as the "**Parties**".

The following Exhibits are attached hereto and made a part of this Conservation Easement:

- |             |                                      |
|-------------|--------------------------------------|
| Exhibit A   | - Description of Phase I Property    |
| Exhibit A-1 | - Description of Phase II Property   |
| Exhibit A-2 | - Description of Phase III Property  |
| Exhibit B-2 | - Second Revised Map of Property     |
| Exhibit C   | - Acknowledgement of Baseline Report |

**RECITALS:**

- A) Grantor is the sole owner in fee simple of the 170.21 acres, more or less (described as 166 acres, more or less, in the Original Conservation Easement), of real property located in Gunnison County, Colorado, more particularly described in **Exhibit A** attached hereto and incorporated by this reference (the "**Phase I Property**"). The Phase I Property was encumbered by the Deed of Conservation Easement granted to the Crested Butte Land Trust, a Colorado nonprofit corporation and recorded June 30, 2010 as Reception No. 599309 of the records of the Gunnison County, Colorado, Clerk and Recorder (the "**Original Conservation Easement**").
- B) Grantor is also the sole owner in fee simple of the 110 acres, more or less, of real property located in Gunnison County, Colorado, more particularly described in **Exhibit A-1** attached hereto and incorporated by this reference (the "**Phase II Property**"). The Phase II Property is adjacent to part of the Phase I Property, as depicted in **Exhibit B-2**

attached hereto and incorporated by this reference. The Original Conservation Easement was amended to also encumber the Phase II Property by the Amended and Restated Deed of Conservation Easement recorded March 3, 2011 as Reception No. 604057 (the "**First Amended Conservation Easement**").

- C) Grantor is also the sole owner in fee simple of the 41.66 acres, more or less, of real property located in Gunnison County, Colorado, more particularly described in Exhibit A-2 and depicted in Exhibit B-2 attached hereto and incorporated by this reference (the "**Phase III Property**").
- D) The Parties wish to restate, merge, supersede and replace the First Amended Conservation Easement (but not interrupt the perpetual duration of either the Original Conservation Easement as amended by the First Amended Conservation Easement or the property right which vested in the Grantee at the recording of the Original Conservation Easement and at the recording of the First Amended Conservation Easement), and to enter into a new conservation easement to encumber the Phase III Property, so that the description of the Property herein includes the Phase I Property, the Phase II Property and the Phase III Property, such that this "**Town Easement**" (also referred to herein as the "**Easement**") encumbers the entire 321.87-acre, more or less, property, described on the attached Exhibits A, A-1 and A-2 (together, the "**Property**"), which at all times shall remain in a single ownership as a single parcel.
- E) The Property possesses agricultural, natural wildlife habitat, scenic, recreational and open space values (collectively, the "**Conservation Values**") of great importance to the Grantor, the Grantee, the people of the Town of Crested Butte, the people of Gunnison County, the people of the State of Colorado, and the people of the United States of America, which are worthy of protection, and which are described in the Baseline Report (defined herein at Paragraph 2 below). The Conservation Values include the conservation purposes described in Recitals F through H below.
- F) Open Space. The preservation of the Property pursuant to this Easement will protect open space and yield significant public benefit, for at least the following reasons:
  - 1) Preservation of the Property will provide an important open space, scenic vista and will buffer this area from surrounding development.
  - 2) The Property is visible from many public places, including: (a) neighboring and nearby public lands owned by the Town of Crested Butte, and lands administered by the U.S. Department of the Interior, Bureau of Land Management ("**BLM**"), and by the U.S. Department of Agriculture, National Forest Service, Gunnison National Forest ("**Forest Service**"); (b) lands owned by the Crested Butte Land Trust on which public access is permitted; (c) public trails on adjoining lands; and (d) Slate River Road and Smith Hill Road.
  - 3) The Property includes significant wildlife and bird habitat, and is in an area which is experiencing substantial development that has reduced open and scenic vistas available to the public; preservation of the Property is consistent with Federal, State and local public conservation programs and with conservation efforts underway on adjoining or nearby properties; development of the Property would contribute to the degradation of the scenic vistas available to the public and to wildlife habitat, resulting in a loss of tourism and commerce to the area.
- G) Wildlife Habitat. The Property provides significant wildlife habitat for at least the following reasons:
  - 1) The Property provides significant wildlife habitat, including a corridor for wildlife migration to and from adjacent and nearby properties owned by the Town of Crested Butte, the Crested Butte Land Trust, the Forest Service and the

BLM.

- 2) The Property is surrounded by other lands that are encumbered by conservation easements that preserve wildlife habitat, open space, scenic vista and agricultural land.
  - 3) In particular the Property provides significant wildlife habitat for deer, elk, mountain lion, bobcats, black bear, eagles, and a wide variety of birds, as further detailed in the Baseline Report.
- H) Public Recreation. The general public shall have access to the Property for recreational opportunities, subject to the regulations imposed on such use and access imposed by the Grantor as may be necessary to protect the public safety, and to protect the other Conservation Values of the Property, and to balance wildlife habitat needs, agricultural uses and public recreation.
- I) The conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the clearly delineated governmental conservation policies:
- 1) The Farm and Ranch Lands Protection Program (16 U.S.C. 3838h and 3838i) under which the Secretary of Agriculture, acting through the Natural Resources Conservation Service, acquires conservation easements or other interests for the purpose of protecting prime, unique or other productive soils by limiting nonagricultural uses of the land.
  - 2) The Colorado Department of Agriculture statutes, Colorado Revised Statutes Sec. 35-1-101, *et seq.*, which provide in part that “it is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products.”
  - 3) Colorado Revised Statutes Sec. 38-30.5-101, *et seq.*, provides for the creation of conservation easements to maintain land “in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural ... or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity.”
  - 4) The Colorado Wildlife and Parks and Outdoor Recreation statutes, Colorado Revised Statutes Sec. 33-1-101, *et seq.*, which provide that “it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors,” and that “it is the policy of the state of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state.”
  - 5) The Colorado Department of Transportation statutes, Colorado Revised Statutes §43-1-401, *et seq.*, provide that the preservation and enhancement of the natural and scenic beauty of this state is a matter of substantial state interest.
  - 6) The Western Governors’ Association Policy Resolution 08-21 supports “voluntary incentive-based methods for preserving open space, maintaining land and water for agricultural and timber production, wildlife, and other values.”
  - 7) Gunnison County Land Use Regulation, Section 1-103A.3., which provides in part that it is a general purpose of the Land Use Resolution of Gunnison County “to protect... the beauty of the landscape and rural character of Gunnison

County...”

- 8) Gunnison County Land Use Regulation, Section 1-103C.3., which provides the goal to “discourage land use change which will adversely affect agricultural operations...”
  - 9) Gunnison County Land Use Regulation, Section 1-103D.3., “to protect and preserve lands from land use activities and patterns of development that would cause significant adverse net impacts to sensitive wildlife habitat...”
  - 10) The Crested Butte Area Plan also places priority on agricultural operations and wildlife habitat. The Area Plan recommends that “developers should work with their neighbors to maintain historic grazing operations.” With regard to wildlife habitat the Area Plan recommends, “Development in Important Wildlife Habitat Areas should be avoided because habitat survival and species survival go hand-in-hand.”
  - 11) Funding for the acquisition of the Phase I Property and the Phase II Property by Grantor has been provided in part by the Great Outdoors Colorado Trust Fund program. The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the Board, by adopting and administering competitive grants application and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state’s wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.
- J) The provisions in this Easement for the benefit of the State Board of the Great Outdoors Colorado Trust Fund (the “Board”) apply only to the Phase I Property and the Phase II Property, and not to the Phase III Property.
- K) Grantee is a charitable organization qualified to hold conservation easements under Section 38-30.5-104(2), C.R.S.
- L) The Grantor desires to protect the Conservation Values of the Property in perpetuity by creation of a conservation easement in gross under Article 30.5 of Title 38, Colorado Revised Statutes.
- M) Grantee agrees by accepting this Easement to preserve and protect in perpetuity the Conservation Values for the benefit of this and future generations.

NOW, THEREFORE, for reasons given, and in consideration of the above and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular C.R.S. Sec. 38-30.5-101, *et seq.*, Grantor hereby voluntarily grants and conveys to the Grantee, its successors and assigns a Conservation Easement in gross in perpetuity, consisting of the rights and restrictions enumerated herein, over and across the Property (the “**Easement**” or the “**Deed**”), of the nature and character and to the extent hereinafter set forth.

- I. Purpose. The purpose of this Easement is to ensure that the Conservation Values are preserved and protected in perpetuity (“**Purpose**”). This Purpose is in accordance with

§ 170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto. To effectuate the Purpose of this Easement, Grantor and Grantee intend to permit only uses of the Property that do not substantially diminish or impair the Conservation Values and to prevent any use of the Property that will substantially diminish or impair the Conservation Values. Notwithstanding the foregoing, nothing in this Easement is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values.

2. Baseline Documentation Report. The Parties acknowledge that a written report dated June 16, 2010, was been prepared by Rare Earth Science, LLC, and reviewed and approved by the Parties. The Report documents the Property's condition as of the date of the conveyance of the Original Conservation Easement, and as of the date of the conveyance of the First Amended Conservation Easement (the "**2010 Baseline Report**"). The 2010 Baseline Report was updated as to the Phase III Property on November 8, 2013, by Rare Earth Science, LLC (the "**2013 Baseline Report Update**"). The 2010 Baseline Report and the 2013 Baseline Report Update are collectively referred to as the "**Baseline Report**". A copy of the Baseline Report shall be kept on file with both Parties and by this reference made a part hereof. The Parties acknowledge that the Baseline Report is intended to establish the condition of the Property as of the conveyance date of this Easement, and both Parties have acknowledged the same in a signed statement, a copy of which is attached hereto as Exhibit C. The Parties further agree that the existence of the Baseline Report shall in no way limit the Parties' ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the conveyance date of this Easement.
3. Rights to the Grantee. To accomplish the Purpose of this Easement, in addition to the rights described in C.R.S. Sec. 38-30.5-101, *et seq.*, as amended from time to time, the following rights are granted to the Grantee:
  - 3.1. To preserve and protect the Conservation Values of the Property;
  - 3.2. To enter upon the Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Easement. The Grantee may utilize vehicles on existing roads, and other reasonable modes of transportation elsewhere, for monitoring and enforcement purposes;
  - 3.3. To prevent any activity on or use of the Property that is inconsistent with the Purposes of this Easement, or which may be reasonably expected to have material adverse impact on the Conservation Values of the Property, and to require the restoration of such areas or features of the Property that are materially damaged by any inconsistent activity or use, and
  - 3.4. To place and maintain on the perimeter of the Property a sign or signs indicating that a conservation easement is held by the Grantee on the Property and acknowledging the Board's Grant. The size of the sign and the location, design and content of such signs shall be determined through mutual agreement of the Grantor and the Grantee.
4. Reserved Rights. Grantor reserves to Grantor, and to Grantor's successors and assigns, all rights accruing from Grantor's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or restricted herein and that do not substantially diminish or impair the Conservation Values.



- 4.1. Recreational and Educational Uses. The Grantor reserves the right to engage in or permit the public to engage in non-commercial, non-motorized educational and passive recreational activities, such as horseback riding, hiking, bicycling, cross-country skiing, and other similar low-impact recreational uses, subject to the terms of the Public Access Paragraph 10, herein (“**Recreational and Educational Uses**”).
- 4.2. Trails and Trail Construction.
  - 4.2.1. Trails. Hiking, biking, equestrian and cross-country ski trails and ski-skating tracks (collectively “**Trails**”), including bridges, signs and other improvements necessary for the trails, may be constructed and maintained on the Property by Grantor with the prior written approval of the Grantee which approval shall not be unreasonably withheld.
  - 4.2.2. Approval for Trails. The approvals described in this Trail and Trail Construction Paragraph shall be given by Grantee within a reasonable time, unless it is determined that the proposed activity, or the location of any trails, will substantially diminish or impair the open space or wildlife habitat Conservation Values of the Property or is otherwise inconsistent with the Purpose of this Easement, in which case permission shall be denied.
  - 4.2.3. Public Use. Public use of the Trails is allowed, subject to the terms of the Public Access Paragraph 10, herein.
  - 4.2.4. Fences. Fences may be constructed, maintained, repaired and replaced on the Property, subject to the provisions of Paragraph 5.12, herein.
- 4.3. Agricultural and Other Activities. In addition to preserving the Grantor’s right to utilize the Property for the Recreational Uses, described above, it is the intention of the Parties to preserve the potential for the Property to be agriculturally productive, including continuing ranching, as well as to preserve the public recreation, open space character and scenic qualities of the Property. The Property shall not be used for industrial activities, or for commercial activities except as described in Paragraph 5.3, below.
- 4.4. Grazing. Grantor may graze livestock on the Property provided that at all times Grantor shall utilize good grazing and range management practices that prevent pasture deterioration and over-grazing and which protect the Conservation Values of the Property. In the event the Grantee determines that the range is deteriorating, that overgrazing is occurring, or that the Conservation Values of the Property are not being protected, the Grantor and the Grantee shall promptly enter into an Agricultural Management Plan for the Property with the Natural Resources Conservation Service (“**NRCS**”) or other resource management agency or consultant mutually agreed upon by Grantor and Grantee. Thereafter, grazing and other agricultural activities on the Property shall be conducted only in accordance with the Agricultural Management Plan until Grantor and Grantee mutually agree to modify or terminate such plan.
5. Prohibited and Restricted Uses. Any activity on or use of the Property inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities are expressly prohibited or are restricted as set forth below:

- 5.1. Development Rights. To fulfill the Purpose of this Easement, Grantor hereby conveys to Grantee all development rights deriving from, based upon or attributable to the Property in any way (“**Grantee’s Development Rights**”), except those expressly reserved by Grantor herein, and the Parties agree that Grantee’s Development Rights shall be held by Grantee in perpetuity in order to fulfill the Purpose of this Easement, and to ensure that such rights are forever released, terminated and extinguished as to Grantor, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating permissible lot yield of the Property or any other property.
- 5.2. Subdivision. The Parties agree that the division, subdivision or de facto subdivision of the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including, but not limited to, condominium interests or the partition of undivided interests) is prohibited. The Parties acknowledge that the Property is comprised of three tracts; nonetheless, at all times the Property shall be owned and conveyed as a single parcel which shall be subject to the provisions of this Deed. Ownership of the Property by joint tenancy or tenancy in common is permitted; provided, however, that Grantor shall not undertake any legal proceeding to partition, subdivide or divide in any manner such undivided interests in the single parcel.
- 5.3. Commercial and Industrial Activities. The Property may not be used for industrial activities or uses. The Property may be used for the Recreational and Educational Uses described in Par. 4.1. Commercial uses are allowed, as long as they are not prohibited by this Easement and are conducted in a manner that is consistent with Section 170(h) of the United States Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto, are consistent with the Purpose of the Easement, and do not substantially diminish or impair the Conservation Values. Without limiting other potential commercial uses that meet the foregoing criteria, the following uses are allowed: farming and agriculture. The foregoing descriptions of allowed commercial uses notwithstanding, commercial feed lots and other intensive growth livestock farms, such as dairy, swine, or poultry farms, are inconsistent with the Purpose of this Easement and are prohibited. For purposes of this Easement, “commercial feed lot” is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the commercial business of the reception and feeding of livestock.
- 5.4. Buildings or Other Structures. No buildings, structure or other similar structures, shall be erected or placed on the Property, except as provided in Paragraph 4.2, above.
- 5.5. Road Construction. Smith Hill Road crosses the Phase II Property. No other roads or driveways shall be constructed or permitted on the Property.
- 5.6. Paving. No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or other paving materials.
- 5.7. Utilities. Existing telephone and electrical utility lines are located on the Property as documented in the Baseline Report; these utility lines may be maintained, repaired, replaced, and placed underground in their current location, or with the approval of the Grantee, in another location on the Property. Grantor may install, construct and maintain underground utilities for the uses

permitted on the Property, such as lighting for trail signs, but for no other uses including uses on other properties.

- 5.8. Signs and Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary ranch or pasture identification signs, “no trespassing” signs for portions of the Property that may be closed to public access, signs regarding the non-motorized low-impact recreational use of the Property, signs informing the public about use of the Property, directional signs, and signs informing the public of the status of ownership. No signs shall significantly diminish or impair the Conservation Values. Grantee shall erect one or more signs visible from the nearest public roadway, or from an alternative location approved by the Board, identifying the Board’s Grant and investment in this Property to the public.

5.9. Mining.

- 5.9.1. No Mining. The drilling, exploration by geophysical and other methods, mining, extraction and operating for and producing from the Property, including the construction of any and all roads, pipelines, structures, equipment, tanks, storage facilities, ponds, evaporation pools or pits, utility lines, of any kind or description, and including all activities described as “oil and gas operations” in C.R.S. Sec. 34-60-103, as amended (collectively referred to as “**mining**”), of soil, sand, gravel, rock, stone, decorative stone, oil, natural gas, coalbed methane (including any and all substances produced in association therewith from coalbearing formations), hydrocarbon, fuel, or any other mineral substance, of any kind or description (collectively referred to as “**minerals**”), is prohibited on the Property, except as provided in this paragraph entitled “Mining”. Mining which disturbs the surface of the Property is prohibited.

- 5.9.2. Pre-existing Mineral Reservations, Severances, or Leases. Grantor and the Grantee acknowledge that a portion of the mineral rights were severed from the ownership of the surface of the Property prior to the date of this Easement, in that certain Deed recorded on January 26, 1973 in Book 449 at Page 103 (which reserves a ½ interest in coal, oil, gas and other minerals and leases or agreements granted pursuant thereto (unless such interests are merged into the ownership of the surface of the Property)).

- 5.9.3. Approval of Surface Use by Grantee. Grantor agrees that by granting this Easement to Grantee, it has granted to Grantee a portion of its rights as owner of the surface of the Property on which the exploration, development, operations and reclamation of any minerals (including but not limited to oil and gas, helium, carbon dioxide and coalbed methane) may be conducted (“**Surface Owner**”). Grantor intends that Grantee, in addition to its interest as a holder of this Easement, shall have the rights of a Surface Owner to receive notices of proposed mineral activities and to take appropriate action to protect the Purpose of this Easement. Accordingly, Grantor agrees: (i) to provide Grantee with any notices Grantor receives related to the exploration, development, operations and reclamation of any minerals; and (ii) that Grantee must approve in

advance in writing any lease or agreement pertaining to use of the surface or subsurface of the Property for the exploration, development, operations and reclamation of any minerals, including any agreement permitted or required of a Surface Owner under C.R.S. §34-60-101 *et seq.*, as amended from time to time, and rules and regulations promulgated thereunder (“**Surface Use Agreement**”), between Grantor and owners or lessees of minerals (including but not limited to oil and gas, helium, carbon dioxide and coalbed methane), which approval Grantee may withhold in its reasonable discretion if it determines that the proposed surface use would substantially diminish or impair the Conservation Values, is inconsistent with the terms of this Easement, or is not permitted under the terms of the mineral reservation or severance or the mineral lease.

- 5.9.4. This Mining Paragraph 5.9 shall be interpreted in a manner consistent with §170(h) of the United States Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto.
- 5.10. Trash. The dumping or uncontained accumulation of trash or refuse on the Property is prohibited.
- 5.11. Hazardous Materials. The storage, dumping or other disposal of “**Hazardous or Toxic Materials**” or of non-compostable refuse on the Property is prohibited. For the purpose of this Easement “Hazardous or Toxic Materials” shall be taken in its broadest legal context and shall include any petroleum products as defined in ASTM Standard E 1527-05 and any hazardous or toxic substance, material or waste that is regulated under any federal, state or local law. Notwithstanding anything in this Easement to the contrary, the prohibitions in this Easement do not make or allow the Grantee or the Board to become an owner or operator of the Property, nor do they permit the Grantee or the Board to exercise physical or managerial control over the day-to-day operations of the Grantor or control any use of the Property by the Grantor which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that the Grantee may bring an action to protect the Conservation Values of the Property, as described in this Easement. (The prohibitions in this Easement do not impose liability on the Grantee or the Board for Hazardous or Toxic Materials, nor shall the Grantee or the Board be construed as having liability as a “responsible party” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) as amended, or similar federal or state statutes.) Nothing in this paragraph shall prohibit the use of agricultural chemicals and products in accordance with applicable laws and manufacturer’s instructions.
- 5.12. Fencing. All new fencing on the Property, including all exterior boundary fencing, shall be compatible with the movement of wildlife across the Property as determined by the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Division of Parks and Wildlife and the Parks and Wildlife Commission. As existing fencing deteriorates, it shall either be removed, or it shall be repaired to be compatible with wildlife movement across the Property.
- 5.13. Motorized Vehicles. Use of snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles on the Property, except on Smith Hill Road, and except

for agricultural, trail construction or maintenance, property-maintenance, emergency access, and enforcement purposes, is prohibited.

- 5.14. Timber Harvesting. Trees may be cut to control insects and disease, to control invasive non-native species, and to prevent personal injury and property damage. Dead trees may also be cut for (a) firewood and may be removed from the Property; and (b) other uses on the Property permitted by this Deed. Commercial timber harvesting on the Property is prohibited.
6. Water Rights. No water rights are encumbered by this Easement.
7. Responsibilities of the Grantor and the Grantee Not Affected. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee or the Grantor, or in any way to affect any existing right or obligation of the Grantor as owner of the Property. Among other things, this shall apply to:
  - 7.1. Taxes. The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property, including any taxes imposed upon, or incurred as a result of, this Easement. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor shall promptly reimburse the Grantee for the same.
  - 7.2. Upkeep and Maintenance. The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, including maintenance of trails and trailheads, trash removal, and weed control and eradication to the extent it may be required by law, and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. The Grantee shall have no obligation for the operation, upkeep or maintenance of the Property.
8. Insurance; Mortgages. The Grantor shall be responsible for the maintenance of reasonable comprehensive general liability insurance coverage on the Property. Grantor shall name the Grantee as an additional insured on such comprehensive general liability insurance coverage and shall provide a certificate of such insurance to the Grantee upon the request of the Grantee.
9. Enforcement.
  - 9.1. If Grantee finds what it believes is a violation of this Easement, Grantee shall immediately notify Grantor and the Board in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either:
    - 9.1.1. Restore the Property to its condition prior to the violation; or
    - 9.1.2. Provide a written explanation to Grantee of the reason why the alleged violation should be permitted, in which event both Parties agree to meet as soon as possible to resolve their differences. If a resolution cannot be achieved at the meeting, both Parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. When, in Grantee's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values, Grantee may, at its discretion, take appropriate legal action without pursuing mediation. If a court with jurisdiction determines that a violation is imminent, exists,

or has occurred, Grantee may get an injunction to stop such violation, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation. These rights are in addition to any rights as described in C.R.S. Sec. 38-30.5-101, *et seq.*, as amended from time to time. The Board shall in no event be required to participate in any mediation.

- 9.2. Any forbearance by the Grantee to exercise its rights under this Easement in the event of a violation of any term shall not be deemed or construed to be a waiver by the Grantee of any term of this Easement or of any of the Grantee's rights under this Easement. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. Grantor hereby waives any defense of laches, estoppel, or prescription, including the one year statute of limitations for commencing an action to enforce the terms of a building restriction or to compel the removal of any building or improvement because of the violation of the same under C.R.S. § 38-41-119, *et seq.*
- 9.3. In case a dispute between the Parties shall arise in connection with this Easement, the substantially prevailing party shall be awarded (in addition to other relief granted) all reasonable attorneys' fees and costs in connection with such dispute.
10. Public Access. The general public shall have access to the Property for recreational opportunities, subject to the regulations imposed on such use and access imposed by the Grantor as may be necessary to protect the public safety, and to protect the other Conservation Values of the Property, and to balance wildlife habitat needs, agricultural uses and public recreation.
11. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such natural events. For purposes of this Easement, "natural event" shall not include acts of third parties. Notwithstanding the foregoing, Grantor shall be responsible for preventing activities by third parties on or affecting the Property that may violate the terms of this Easement. Grantor understands that nothing in this Easement relieves the Grantor of any obligation or restriction on the use of the Property imposed by law.
12. Assignment of Easement.
  - 12.1. This Easement is transferable by the Grantee, but the Grantee may assign its rights and obligations under this Easement only to an organization that (a) is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, (b) is authorized to acquire and hold conservation easements under Colorado law, (c) agrees in writing to assume the responsibility imposed on the Grantee by this Easement, and (d) is approved in writing as a transferee by the Board in its sole and absolute discretion. The Grantee shall provide the Board with a written request to assign the Easement at least forty-five (45) days prior to the date proposed for the assignment transaction.

- 12.2. The Board shall have the right to require the Grantee to assign its rights and obligations under this Easement to a different organization if the Grantee ceases to exist, is unwilling, unable, or unqualified to enforce the terms and provisions of this Easement; or is unwilling or unable to effectively monitor the Property for compliance with this Easement at least once every calendar year. Prior to any assignment under this Assignment of Easement Paragraph 12, the Board shall consult with Grantee and provide Grantee an opportunity to address the Board's concerns. If the Board's concerns are not addressed to its satisfaction, the Board may require that Grantee assign this Easement to an organization designated by the Board that complies with Paragraph 12.1(a), 12.1(b) and 12.1(c), above.
- 12.3. If the Grantee desires to transfer this Deed to a qualified organization having similar purposes as the Grantee, but Grantor or the Board has refused to approve the transfer, a court with jurisdiction shall transfer this Deed to another qualified organization having similar purposes that agrees to assume the responsibility imposed on the Grantee by this Deed, provided that Grantor and the Board shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter. As a condition of such transfer, the Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.
- 12.4. Upon compliance with the applicable portions of this Assignment of Easement Paragraph 12, the Parties shall record an instrument completing the assignment in the records of the county or counties in which the Property is located. Assignment of the Easement shall not be construed as affecting the Easement's perpetual duration and shall not affect the Easement's priority against any intervening liens, mortgages, easements, or other encumbrances.
13. Transfer of Property. Any time the Property itself, or any interest in it, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee and the Board in writing at least forty-five (45) days prior to the transfer of the Property. The document of conveyance shall expressly refer to this Easement. The Grantor may be required to pay the Board an Additional Board Refund under Paragraph 14 below. Upon any transfer of the Property, or any portion thereof, Grantor shall have no further liability or obligations under this Easement with respect to the portion of the Property which is transferred, except to the extent such liability arises from acts or omissions occurring prior to the date of transfer.
14. Additional Board Refund. The Board's Grant has provided partial consideration for Grantor's acquisition of fee title to the Property, associated water rights, and/or partial real estate interest in the Property above and beyond this Easement; therefore, any voluntary sale, conveyance, transfer, or other disposal of all or any portion of Grantor's interest in the Property or associated water or mineral rights ("**Sale**"), excluding any lease of the Property or the water rights to a third party in the ordinary course of using the Property for permitted purposes, shall constitute a material change to the Grant that shall require prior written Board approval and may require a separate refund to the Board of an amount to compensate the Board for use of the Board's Grant, plus administrative costs (the "**Additional Board Refund**"), in addition to any payment that the Board may be entitled to receive under Paragraphs 12 and 13 above.
- 14.1. Amount. The amount of the Additional Board Refund shall be based upon a percentage of Grantor's net proceeds from the Sale (which shall be defined as the fair market value of the property being sold in the Sale, minus direct transaction

costs) ("**Net Proceeds**"). The Additional Board Refund shall be determined by: a) first dividing the Board's Grant amount by the original purchase price for fee title to the Property; b) then by multiplying the resulting ratio by the Net Proceeds; and c) adding interest figured from the Grant payment date at the Prime Rate listed by the Federal Reserve Bank of Kansas City, Missouri that is most current on the effective date of the Sale. The Board may, in its sole discretion, waive the requirement for payment of interest or reduce the amount of interest due at the time of the Sale. The Additional Board Refund shall be paid to the Board in cash or certified funds on or before the effective date of the Sale.

- 14.2. Possible Exception to Refund Requirement. If a Sale occurs to a third party which is eligible to receive open space funding from the Board, and the Board has provided written confirmation of the third party's eligibility, Grantor shall not be required to pay the Board an Additional Board Refund, unless the Board determines in its sole discretion that one or more aspects of the Grant have changed that reduce the Grant project's scope from that of the original Grant as approved by the Board. (For example, if the Grantor proposed that the Grant project would include public access to the Property, and the Sale will result in substantially the same amount and type of public access, the Board will deem that a material change in the Grant project's scope has not occurred, and Grantor shall not be required to pay the Board an Additional Board Refund, unless another aspect of the Grant project has changed that reduces the Grant project's scope from that of the original Grant as approved by the Board.)-

15. Amendment of Easement. If circumstances arise under which an amendment to or modification of this Easement or any of its exhibits would be appropriate, Grantor and Grantee may jointly amend this Easement so long as the amendment (a) is consistent with the Conservation Values and Purpose of this Easement, (b) does not affect the perpetual duration of the restrictions contained in this Easement, (c) does not affect the qualifications of this Easement under any applicable laws, (d) complies with Grantee's and the Board's procedures and standards for amendments (as such procedures and standards may be amended from time to time) and (e) receives the Board's prior written approval in its sole discretion. Any amendment must be in writing, signed by both Parties, and recorded in the records of the Clerk and Recorder of the county or counties in which the Property is located. In order to preserve the Easement's priority, the Board may require that the Grantor obtain subordinations of any liens, mortgages, easements, or other encumbrances. For the purposes of the Board's approval under item (e) above, the term "amendment" means any instrument that purports to alter in any way any provision of or exhibit to this Easement. Nothing in this paragraph shall be construed as requiring Grantor, Grantee or the Board to agree to any particular proposed amendment.

16. Hold Harmless. Grantor shall hold harmless, indemnify, and defend the Grantee, the Board, and the members, directors, officers, employees, agents, contractors, successors and assigns of each of them (collectively, "**Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with (1) injury or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent due to the negligence or intentional acts or omissions of any of the Indemnified Parties; and (2) the presence or release of Hazardous or Toxic Materials on, under or about the Property. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or



toxic substance that is regulated under any federal, state or local law. Without limiting the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability in Grantee or the Board, nor shall Grantee or the Board have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

17. Termination of Easement.

- 17.1. Real Property Interest. This Easement constitutes a real property interest immediately vested in the Grantee, the value of which has not been determined as of this date. Should the Easement be taken for the public use or otherwise terminated according to Paragraph 17.2 below, Grantee shall be entitled to compensation for its interest, which shall be determined by a qualified appraisal that establishes the ratio of the value of the Easement interest to the value of the fee simple interest in the Property as of the date of the taking or termination (the “**Easement Value Ratio**”). The Easement Value Ratio shall be used to determine the Grantee’s compensation according to the following Paragraph 17.2
- 17.2. Condemnation or Other Extinguishment. If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, or if circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each Party shall promptly notify the other Party and the Board in writing when it first learns of such circumstances. Grantee shall be entitled to full compensation for its interest in any portion of this Easement that is terminated as a result of condemnation or other proceedings. Grantee’s compensation shall be an amount at least equal to the Easement Value Ratio, multiplied by the value of the unencumbered fee simple interest in the portion of the Property that will no longer be encumbered by this Easement as a result of condemnation or termination. As to the Phase I Property Grantee’s Proceeds shall be paid as follows: 66.6% to the Board and 33.4% to the Grantee. As to the Phase II Property Grantee’s Proceeds shall be paid as follows: 62.5% to the Board and 37.5% to the Grantee. As to the Phase III Property Grantee’s Proceeds shall be paid as follows: 100% to the Grantee. Grantee shall promptly remit the Board’s share of these proceeds to the Board. Grantee shall use its proceeds in a manner consistent with the conservation purposes of this Easement.
- 17.3. Change of Circumstances. In granting this Easement the Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both the Grantor and the Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement in whole or in part. In addition, the inability of the Grantor, or Grantor’s, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for termination of this Easement in whole or in part.

18. Approvals. Certain activities herein are allowed only if the permission of the Grantee is first obtained. When approval of the Grantee is required, the Grantor must give notice to the Grantee of the intention to undertake any activity which requires approval but is otherwise permitted herein. The notice shall inform the Grantee of all aspects of the proposed activity, including location, design, materials or equipment to be used, dates and duration, and any other relevant information and must be deemed sufficient by the Grantee in its discretion for review of the proposed activity to constitute proper notice. The Grantee shall have thirty (30) days from the receipt of the notice to review the proposed activity and to notify the Grantor of any objections thereto. Except as provided herein where the Grantee's approval may be withheld in its discretion, the approval may be withheld only upon a reasonable determination by the Grantee that the action as proposed would be inconsistent with the Purpose of this Easement and materially adversely impact the Conservation Values of the Property; the reason(s) for such determination shall be set forth with specificity by the Grantee in such written notice to Grantor. Where the Grantee's approval is required, Grantor shall not undertake the requested activity until Grantor has received the Grantee's approval in writing. The Grantor shall be responsible for all costs of the Grantee associated with the review of any proposed approval under this Paragraph and any discretionary approval of Grantee under this Easement, including the costs for surveys, biological studies, appraisals, staff costs and overhead, unless the Parties agree otherwise in writing in advance for any particular approval.

19. Notices. Any notices required by this Easement shall be in writing and shall be personally delivered or sent by Federal Express or other similar courier service specifying the earliest available delivery, or by certified mail, return receipt requested, to the Grantor, the Grantee and the Board at the following addresses:

To the Grantor:

Town of Crested Butte  
P.O. Box 39  
Crested Butte, CO 81224

To the Grantee:

Crested Butte Land Trust  
308 3<sup>rd</sup> Street  
P.O. Box 2224  
Crested Butte, Colorado 81224

To the Board:

Executive Director  
State Board of the Great Outdoors Colorado Trust Fund  
303 E. 17<sup>th</sup> Ave., Suite 1060  
Denver, CO 80203

or to such other address as either Party or the Board from time to time shall designate by written notice to the other.

20. Grantor's Title Warranty; Access. The Grantor warrants that it has good and sufficient title and legal and physical access to the Property, that the Grantee has access to the Property for the Purposes described in this Easement, that any mortgages, deeds of trust

or monetary liens encumbering the Property are subordinate to the terms of this Easement, and hereby promises to defend the same against all claims from any persons. Grantor hereby grants to the Grantee the right to access the Property for the Purposes described herein, across any property owned by the Grantor, including this Property, or across any easements, rights of way or routes of access of any kind or description, now owned or later acquired by the Grantor, and to ensure that at all times the Grantee has full right of access to the Property for the Purposes described in this Easement. The Parties intend that this Easement encumber the Property, including any and all soil, sand, gravel, oil, natural gas, fuel, rock, stone or any other mineral substance of any type or character on or thereunder, whether any such interest is now owned or is later acquired by the Grantor.

21. Grantor's Environmental Warranty. The Grantor warrants that it has no knowledge of a release or threatened release of Hazardous or Toxic Materials on the Property and promises to defend and indemnify the Grantee and the Board, and the successors and assigns of each, against all litigation, claims, demands, penalties, and damages, including reasonable attorney's fees, arising from breach of this warranty.
22. Grantor's Other Warranties. Grantor is duly authorized (and if the Grantor is a non-governmental entity it is properly organized and in good standing), and has taken all necessary actions to execute this Easement and this Easement is enforceable against Grantor in accordance with its terms. Grantor is in substantial compliance with the laws, orders, and regulations of each governmental department, commission, board, or agency having jurisdiction over the Property in those cases where noncompliance would have a material adverse effect on the Property or this Easement.
23. Acceptance. As attested by the signature of its President affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Easement.
24. Recording. The Grantee shall record this instrument in timely fashion in the official records of Gunnison County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement.
25. General Provisions.
  - 25.1. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado. Venue for any dispute concerning this Easement shall be Gunnison County, Colorado.
  - 25.2. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of C.R.S. §38-30.5-101, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
  - 25.3. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

- 25.4. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- 25.5. Joint Obligation. In the event the Property is owned by more than one owner, all such owners shall be jointly and severally liable for the obligations imposed by this Easement upon Grantor.
- 25.6. Non-Merger. If Grantee wishes to acquire fee title to the Property or any additional interest in the Property (such as a leasehold), Grantee must first obtain the written approval of the Board. As a condition of such approval, the Board may require that the Grantee first transfer the Easement to another qualified organization consistent with the Assignment of Easement Paragraph 12, above.
- 25.7. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
- 25.8. Termination of Rights and Obligations of Grantee. Provided a transfer is permitted by this Easement, a party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 25.9. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- 25.10. No Third-Party Beneficiary. This Easement is entered into by and between the Grantor and the Grantee, and except as provided herein, is solely for the benefit of the Grantor, the Grantee and the Board, and their respective successors in interest and assigns and does not create rights or responsibilities in any third parties beyond Grantor, Grantee and the Board.
- 25.11. Termination of the Board. In the event that Article XXVII of the Colorado Constitution, which established the State Board of the Great Outdoors Colorado Trust Fund, is amended or repealed to terminate the Board or merge the Board into another entity, the rights and obligations of the Board hereunder shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor.
- 25.12. Authority to Execute. Each party represents to the other that such party has full power and authority to execute, deliver, and perform this Easement, that the individual executing this Easement on behalf of said party is fully empowered and authorized to do so, and that this Easement constitutes a valid and legally binding obligation of said party enforceable against said party in accordance with its terms.
- 25.13. Board Provisions Do Not Apply to Phase III Property. The property interest represented by this Easement as it encumbered the Phase I Property and the Phase II Property has been provided in part by the Board. The provisions in this

Easement for the benefit of the Board apply only to the Phase I Property and the Phase II Property, and not to the Phase III Property.

26. Land Management / Management Plan. To facilitate periodic communication between Grantor and Grantee about management issues that may impact the Conservation Values, the Property shall be operated and managed in accordance with the “**Management Plan**” jointly prepared by Grantor and Grantee dated July 6, 2010, and updated November 14, 2013, and shall be reviewed at least every five years and updated if either party determines an update is necessary.

TO HAVE AND TO HOLD this Second Amended and Restated Deed of Conservation Easement unto the Grantee, its successors and assigns forever.

IN WITNESS WHEREOF Grantor and the Grantee have executed this Deed of Conservation Easement on this \_\_\_\_ day of \_\_\_\_\_, 2013.

**GRANTOR:**

TOWN OF CRESTED BUTTE,  
a Colorado home rule municipality

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, Town Clerk

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF GUNNISON    )

The foregoing Second Amended and Restated Deed of Conservation Easement was  
acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by  
\_\_\_\_\_, as Mayor, and \_\_\_\_\_ as Town Clerk  
of Crested Butte, Colorado, a Colorado home rule municipality.

Witness my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Accepted:

CRESTED BUTTE LAND TRUST, a Colorado non-profit corporation

by: \_\_\_\_\_

\_\_\_\_\_, President

attest: \_\_\_\_\_

\_\_\_\_\_, Vice President

\_\_\_\_\_

STATE OF COLORADO       )  
  ) ss.  
COUNTY OF GUNNISON     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2013, by \_\_\_\_\_, as \_\_\_\_\_ and by \_\_\_\_\_  
as \_\_\_\_\_, of the Crested Butte Land Trust, a Colorado non-profit corporation.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Notary Public

**Exhibit A – Description of Phase I Property**

**GUNNISON COUNTY, COLORADO:**

**Township 13 South, Range 86 West, 6th P.M.**

Section 21:   E1/2SE1/4NW1/4  
              NE1/4NW1/4

Section 27:   S2/3NW1/4SE1/4  
              S1/2SE1/4



**Exhibit A-1 – Description of Phase II Property**

**Township 13 South, Range 86 West, 6th P.M.**

Section 21: E1/2NW1/4SE1/4  
SW1/4NE1/4  
S1/2SE1/4 except that portion of the 70.2 acre tract recorded at Reception No. 599303 and 599304, lying within the S1/2SE1/4

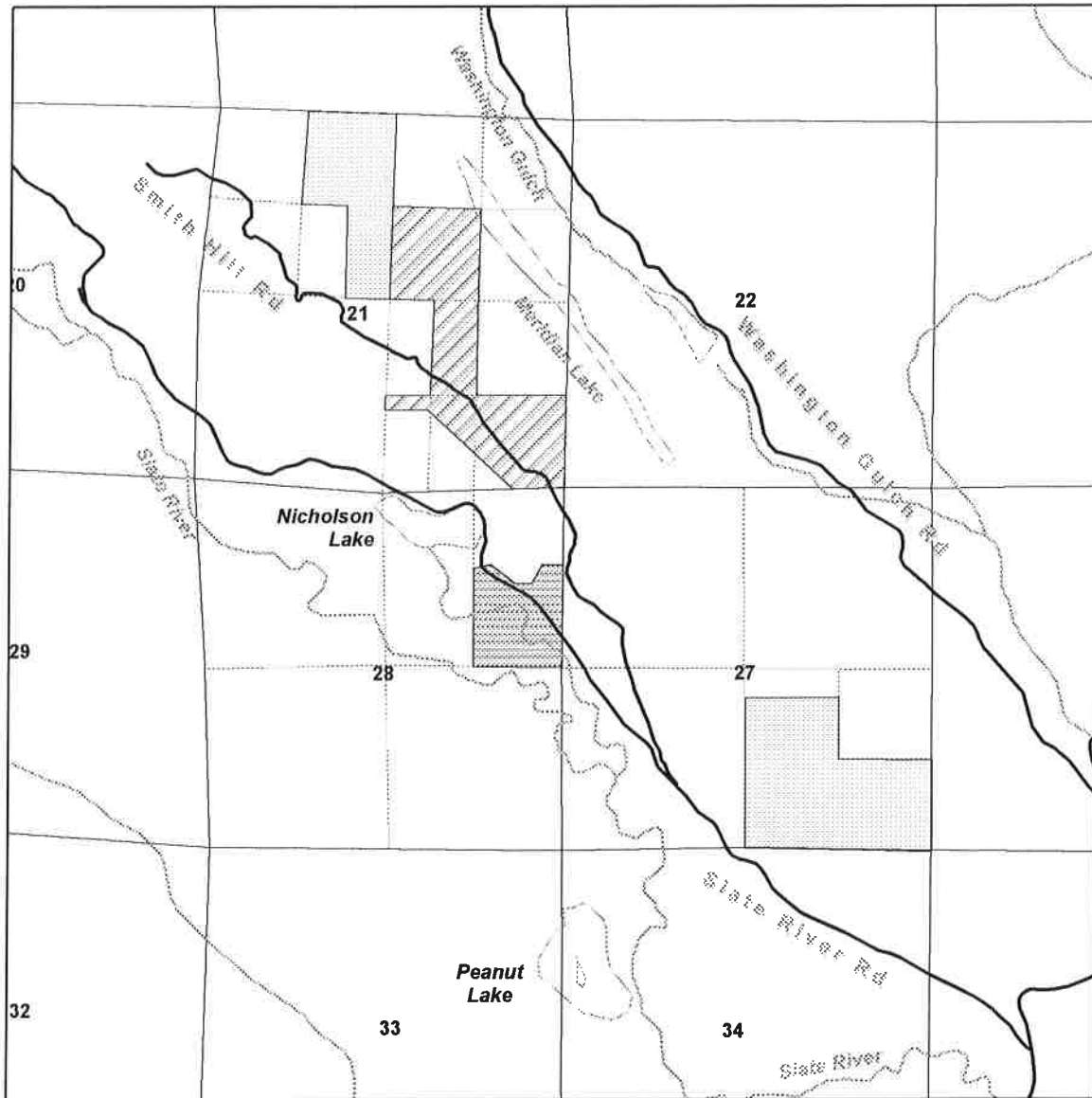
**Exhibit A-2 – Description of Phase III Property**

**Township 13 South, Range 86 West, 6th P.M.**

Section 28: E1/2NE1/4; except that portion of the 70.2 acre tract recorded at Reception No. 599303 and 599304, lying within the E1/2NE1/4, and except any portion in the Slate River Road (County Road 734) right-of-way.

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## EXHIBIT B-2 SECOND REVISED MAP OF PROPERTY



### PARCEL DESCRIPTIONS

All Within Township 13 South, Range 86 West, 6th P.M.

#### PHASE I

Section 21: E1/2 SE1/4 NW1/4  
NE1/4 NW1/4

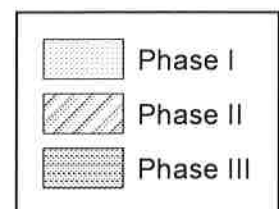
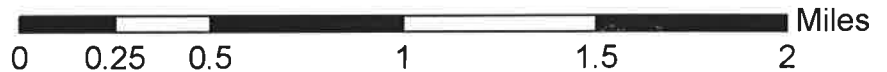
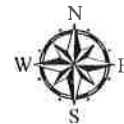
Section 27: S2/3 NW1/4 SE1/4  
S1/2 SE1/4

#### PHASE II

Section 21: E1/2 NW1/4 SE1/4  
SW1/4 NE1/4  
S1/2 SE1/4 except that portion of the 70.2 acre tract recorded at Reception No. 599303 and 599304, lying within the S1/2 SE1/4

#### PHASE III

Section 28: E1/2 NE1/4; except that portion of the 70.2 acre tract recorded at Reception No. 599303 and 599304, lying within the E1/2 NE1/4, and except any portion in the Slate River Road (County Road 734) right-of-way



**Exhibit C - Acknowledgment of Baseline Documentation Report**

The undersigned, on behalf of the **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality (the “**Grantor**”), and a representative of the **CRESTED BUTTE LAND TRUST**, a Colorado non-profit corporation (the “**Grantee**”), acknowledge that (1) the “**Baseline Documentation Report Kochevar Open Space Conservation Easement, Gunnison County, Colorado**”, dated June 16, 2010, and prepared by Rare Earth Science, LLC, has been reviewed by the Grantor and the Grantee and is an accurate representation of the biological and physical condition of the Kochevar Property as of the date of conveyance of the Original Conservation Easement, and as of the date of conveyance of the First Amended and Restated Deed of Conservation Easement; and (2) the “**Baseline Documentation Report Kochevar Open Space Conservation Easement, Gunnison County, Colorado**” which was updated on November 8, 2013, by Rare Earth Science, LLC, as to the Phase III Property, has been reviewed by the Grantor and the Grantee and is an accurate representation of the biological and physical condition of the Kochevar Phase III Property as of the date of conveyance of this Second Amended and Restated Deed of Conservation Easement.

**GRANTOR:**

TOWN OF CRESTED BUTTE,  
a Colorado home rule municipality

By: \_\_\_\_\_

\_\_\_\_\_, Mayor

**ATTEST:**

By: \_\_\_\_\_

\_\_\_\_\_, Town Clerk

**GRANTEE:**

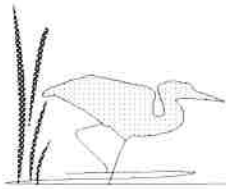
CRESTED BUTTE LAND TRUST, a Colorado non-profit corporation

by: \_\_\_\_\_

Executive Director

attest: \_\_\_\_\_

\_\_\_\_\_, Secretary



## RARE EARTH SCIENCE

[www.rareearthscience.com](http://www.rareearthscience.com)

November 8, 2013

Justin Spring  
The Trust for Public Land  
1410 Grant Street, Suite D210  
Denver, Colorado 80203

**Re: Baseline Report Update  
Kochevar Open Space Property - Phase III Conservation Easement  
Gunnison County, Colorado**

Dear Justin:

In 2010, Rare Earth Science, LLC (Rare Earth) completed a Baseline Documentation Report for the Kochevar Open Space, an approximately 322-acre property near Crested Butte. In partnership with The Trust for Public Land, the Town of Crested Butte ("grantor") is conveying, in a phased manner, a perpetual conservation easement on the property to Crested Butte Land Trust ("Land Trust" or "grantee"). The grantor and grantee are currently preparing to encumber the approximately 42-acre Kochevar Open Space Phase III property into the conservation easement (the location of the Phase III property in relation to the other Kochevar Open Space properties is shown on maps provided in the 2010 Baseline Documentation Report). The Phase III property is shown on the enclosed map.

To verify that the baseline conditions and conservation values on the Phase III property have not changed since publication of the 2010 Baseline Documentation Report, Dawn Reeder of Rare Earth reviewed a site inspection form and monitoring report for the property prepared by the grantee, and James Armstrong of Rare Earth visited the property on October 4, 2013. No new improvements or changes to the improvements mapped in the 2010 Baseline Documentation Report were observed by Rare Earth during the update visit.

Existing improvements on the property are minimal, consisting of Slate River Road (passes through the northeast part of the property), minimal boundary fencing, an overhead utility line, and a buried utility line (see Figure 4 of the 2010 Baseline Documentation Report). The property features approximately 29 acres of riverine wetland complex associated with the Slate River, and approximately 12 acres of montane sagebrush shrub-steppe.

The conservation values on the Phase III property are summarized as follows:

1. Relatively natural habitat. The property's montane sagebrush shrub-steppe habitat and riverine wetlands provide forage, cover, breeding habitat, migratory habitat, and/or habitat connectivity for a diverse array of wildlife species. These species include animals considered threatened, endangered, or rare by the Colorado Parks & Wildlife (CPW), such as mountain toad (state endangered) and northern leopard frog (state species of concern). The property lies within overall ranges of several game species, including black bear, mountain lion, American elk, and mule deer, and within mule deer summer range and elk summer and winter range mapped by the CPW. Game species are important to the biodiversity and economy (hunting and tourism revenue) of the region. Other species supported by the relatively natural habitat on the property include sage sparrow (an obligate sagebrush songbird declining throughout much of its range), beaver, great blue heron, coyote, bobcat, and numerous small rodents. Raptors such as red-tailed hawk, golden eagle, and American kestrel find plentiful prey on the property. The conservation easement will protect the property from future undesirable development which could cause adverse impacts on wildlife in the area. The entire property is included in the Slate River Potential Conservation Area (PCA) designated by the Colorado Natural Heritage Program (CNHP). PCAs identify land units deemed important to the continued existence of ecological processes that support one or a suite of rare or significant habitat features or species, and are intended to assist local governments and organizations with land-use planning and conservation strategies. The PCA's primary element is the extensive high-quality wetland complex in the floodplain of the Slate River, 29 acres of which is located on the property. The PCA boundary includes surrounding uplands because of the potential for upstream and upslope activities (such as improper livestock grazing practices, erosion, and water diversion) to impact the hydrological processes necessary to maintain the wetland complex.
2. Open space. The property's aesthetically-pleasing and harmonious array of shapes and textures created by its rolling topography and open native shrub-steppe vegetation cover provide rural scenic enjoyment to the general public and contribute to the openness and variety of the overall landscape in the region. The property adjoins a large network of conserved open space lands, with connectivity to lands administered by the U.S. Bureau of Land Management (BLM) and the Gunnison National Forest, beyond. The property is visually accessible to the general public from Slate River Road (County Road 734), from Smith Hill Road, from many points within the Town of Crested Butte, from public trails on adjoining open space lands, and from nearby public lands in general. Scenic, open vistas available to the general public from public roads or nearby public lands across the property include surrounding rural-agricultural lands and several peaks of the Ruby Range and Elk Mountains. Slate River Road is a popular public access-way to the Gunnison National Forest (Forest Road 734 within the Forest), and is utilized year-round by citizens of and visitors to Gunnison County.


Preservation of the property yields significant public benefit because its open space provides a) scenic enjoyment for the general public, and b) wildlife habitat at the site-specific level and habitat connectivity at the landscape level. Conservation of open space is recognized as important to the general public by State of Colorado Statutes (with specific reference to wildlife habitat, scenic views, and agricultural lands) and by the Gunnison County Land Use Resolution (with specific reference to scenic corridors and wildlife habitat). The Crested Butte Area Plan places a priority on agricultural operations and wildlife habitat, recommending that developers "work with their neighbors to maintain historic grazing operations" and "development in important wildlife habitat areas be avoided because habitat survival and species survival go hand-in-hand."

3. Recreation. The general public will have access to the property (subject to regulations imposed by the grantor to protect public safety and the other conservation values of the property) for non-commercial, non-motorized outdoor recreational opportunities (such as cross-country skiing, hiking, biking, and horseback riding). The grantor may but is not required to construct a trail or trails on the property, which will connect to trails on surrounding properties, enhancing public access to outdoor recreational opportunities in the general vicinity. Trails on surrounding properties receive substantial and regular use by the general public for the purpose of non-motorized outdoor recreation.

With this letter I hereby verify that the 2010 Baseline Documentation Report still accurately describes the baseline conditions and conservation values (as specifically summarized above) of the Phase III property of the Kochevar Open Space. As a trained biologist familiar with the region who has personally prepared baseline documentation for more than 200 conservation easement projects in western Colorado, I am qualified to provide this baseline documentation report update.

Sincerely,

**Rare Earth Science, LLC**

  
Dawn Reeder  
Principal Biologist

enc: Figure 1 – Kochevar Phase III CE Documentation Update 2013

#### **GRANTOR / GRANTEE ATTESTATION**

To the best of our knowledge, this baseline documentation report update is an accurate representation of the Phase III Kochevar Open Space property on \_\_\_\_\_, 20\_\_\_\_, the time of the conveyance of the conservation easement. The conservation values include relatively natural habitat, open space, and recreation.

\_\_\_\_\_  
Aaron Huckstep, Mayor  
Town of Crested Butte, GRANTOR

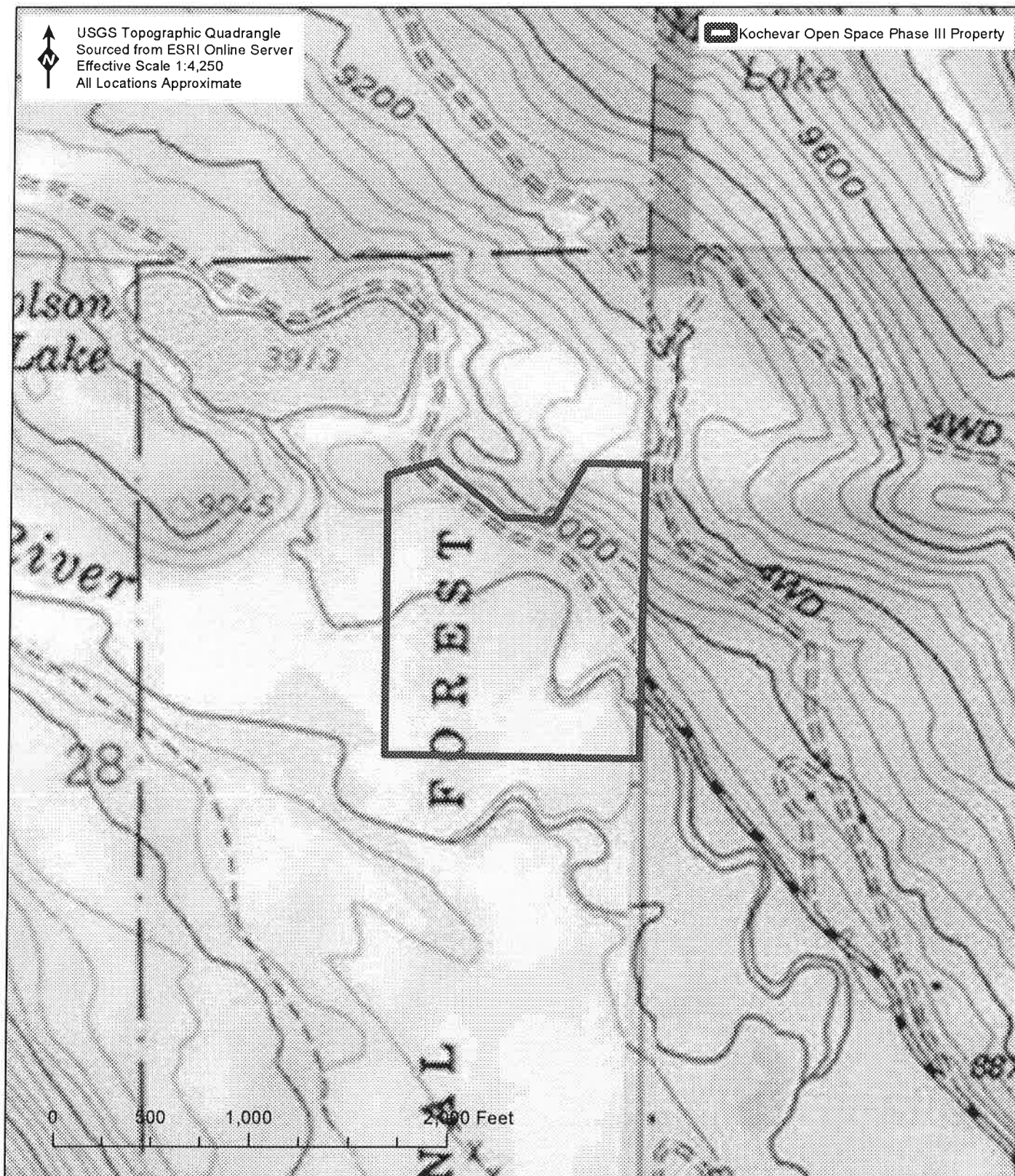
\_\_\_\_\_  
Andrea F. Johnston, Executive Director  
Crested Butte Land Trust, GRANTEE



USGS Topographic Quadrangle  
Sourced from ESRI Online Server  
Effective Scale 1:4,250  
All Locations Approximate



Kochevar Open Space Phase III Property



DATE: October 2013

DRAWN BY: D. Reeder



**RARE EARTH SCIENCE**

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## PROPERTY BOUNDARY

KOCHEVAR PHASE III  
CE DOCUMENTATION UPDATE 2013  
Gunnison County, Colorado

FIGURE

1